

REMARKS

The final Office Action dated March 9, 2007 rejected all pending claims. This paper amends claims 1, 13, 20, 32, 39, and 53. Claims 1, 2, 5, 8, 13, 14, 20, 21, 24, 27, 32, 33, 39, 40, 43, 46, and 51-54 remain pending in the application.

Claim Rejections - 35 USC § 103

The Office Action rejects claims 1, 2, 5, 8, 13, 14, 20, 21, 24, 27, 32, 33, 39, 40, 43, 46, and 51-54 under 35 U.S.C. 103(a) as being unpatentable over Bertin (U.S. Patent No. 5,687,167) in view of Bertin (U.S. Patent No. 5,600,638). Applicants respectfully traverse the rejection because the cited references, whether taken alone or in combination, do not disclose, teach, or suggest every element and limitation of the Applicants' invention as now claimed.

The Applicants' invention, as now set forth in representative independent claim 1, includes evaluating one or more network paths between a source and a destination until one network path is found with sufficient unused network resource available for supporting the data packet flow of the data path and with at most an acceptable maximum number of hops, or until no such network path is found. If no such network path is found, the Applicants' invention selects a network path between the source and destination having the most unused network resource. The data path is configured on the selected network path. In addition, network resource is taken from an existing data path on that selected network path having a priority lower than the predetermined priority of the data path in order to allocate sufficient network resource to the data path to support the data packet flow associated therewith.

Bertin '167 discloses a path selection process for selecting a path through a network for establishing a connection. A path determination process identifies all possible paths between the source and destination. When searching for a feasible path, Bertin's path selection process considers preempting lower priority connections on that path.

Unlike the Applicants' claimed invention, however, Bertin's path selection process does not make a specific determination of whether none of the possible paths has sufficient unused network resource. That is, Bertin does not evaluate each possible path in sequence to determine first if any path has sufficient unused network resource, and then, finding none, select a network path having the most unused network resource of the network paths between the source and destination. Rather, Bertin's evaluation of each link of a possible path indivisibly includes taking into consideration the preemptible capacity reserved or in use by lower priority connections on that link (col. 13, lines 63-65, col. 14, lines 24-26). Thus, Bertin '167 does not teach or suggest the Applicants' claimed invention, which selects the network path with the most unused network resource after determining that no network path exists with sufficient unused network resource and configures the data path on that selected network path. Thus, under these circumstances, Applicants' preempting of a lower priority path occurs after the network path is selected. In contrast, Bertin's preemption occurs when making the path selection.

Bertin '638 teaches a path selection process that uses a maximum number of links as a criterion when evaluating a given path between a source and a destination. However, Bertin '638, like Bertin '167 does not teach or suggest evaluating each possible path to determine first if any path has sufficient unused network resource, and then, finding none, select a

network path having the most unused network resource of the network paths between the source and destination, as now set forth in the Applicants' claimed invention. Therefore, neither Bertin '167 nor Bertin '638, whether taken alone or in combination, teaches or suggests all elements and limitations of the Applicants' invention as now claimed. Applicants submit that the amendment to the claims has overcome the rejection and respectfully request its withdrawal.

Each other independent claim recites language similar to that of claim 1, and therefore is patentable for at least the reasons provided in connection with claim 1. Each dependent claim depends directly or indirectly from one of the patentable independent claims, and incorporates all of its respective limitations and, therefore, is patentably distinguishable over the cited references for at least those reasons provided in connection with the independent claims. Each dependent claim also recites an additional limitation, which, in combination with the elements and limitations of its independent claim, further distinguishes that dependent claim from the cited references. Applicants respectfully request withdrawal of the rejection of these claims.

CONCLUSION

In view of the arguments made herein, Applicants submit that the application is in condition for allowance and requests early favorable action by the Examiner.

If the Examiner believes that a telephone conversation with the Applicant's representative would expedite allowance of this application, the Examiner is cordially invited to call the undersigned at (508) 303-2003.

Authorization is hereby granted to apply any credits or fees due in this case not covered by check to Deposit Account 50-2295.

Respectfully submitted,

Date: June 11, 2007
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